SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. —

THE UNITED STATES OF AMERICA, PETITIONER

vs.

WILLIAM MINSKI

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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1 In United States District Court, Eastern District of Michigan

THE UNITED STATES OF AMERICA, PLAINTIFF

v.

WILLIAM MINSKI

Docket entries

Nov. 26, 1941—Indictment filed. Report of vote of Grand Jury filed. Defendant arraigned, waives reading, has Counsel Harold Armstrong, stands mute, plea of not guilty entered. Remanded. Picard, J.

Dec. 5, 1941—Motion to dismiss indictment filed, hearing December 9, 1941. Motion to suppress filed. Hearing December 9, 1941.

Dec. 10, 1941—Motion to suppress and dismiss indictment denied. Picard, J. Jury trial begins. Jurors impaneled and sworn. Jury excused until further notice. Picard, J.

Dec. 18, 1941—Subpoena to Barney Nowicki, et al and Ray Walker, returned, filed. Order denying motion to suppress evidence filed and entered. Picard, J. Order denying motion to dismiss Indictment filed and entered. Picard, J. Jury trial resumed. Witnesses sworn. Continued to December 19, 1941. Picard, J.

Dec. 19, 1941—Jury trial resumed. Witnesses sworn. Continued to December 23, 1941. Picard, J.

Dec. 23, 1941—Subpoena duces tecum to Clerk, Recorders Court, returned and filed. Jury trial resumed, witnesses sworn, arguments of counsel, charge of the Court. Verdict guilty as charged. Sentence, imprisonment in a penitentiary for five years on each of three counts to run concurrently. Commitment issued. Defendant's requests to charge filed.

Dec. 26, 1941—Notice of appeal and grounds of appeal filed.

Jan. 17, 1942—Commitment returned, executed, and filed.

Jan. 20, 1942—Order extending period for filing bill of exceptions, for 60 days filed and entered. Picard, J.

Mar. 23, 1942—Order extending period for filing bill of exceptions for 60 days filed and entered. Picard, J.

2 In the District Court of the United States for the Eastern District of Michigan, Southern Division

Indictment

Filed November 26, 1941

Of the November Term, A. D., 1941

EASTERN DISTRICT OF MICHIGAN,
Southern Division, ss:

The Grand Jurors of the United States of America, empaneled and sworn to inquire in and for the body of the Southern Division of the Eastern District of Michigan, upon their oaths present: That heretofore, to wit: on the 22nd day of September A. D., 1941, at the City of Hamtramck, in the County of Wayne, in the Southern Division of the Eastern District of Michigan and within the jurisdiction of this Honorable Court, William Minski, alias William Seklecki, alias William Mininski, alias Joseph Michalski, late of the City of Detroit, State of Michigan, was a person who had been previously convicted of a crime of violence, to wit: a crime of robbery while armed, did unlawfully, wilfully, feloniously, and knowingly receive and possess a firearm, to wit: one 45-caliber Colt, single action, Frontier Model, revolver, which firearm had theretofore been shipped and transported in interstate commerce: Contrary to the form, force, and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

COUNT TWO

And the Grand Jurors aforesaid, upon their like oaths, do further present: That heretofore, to wit: on the 22nd day of September A. D., 1941, at the City of Hamtramck, in the County of Wayne, in the Southern Division of the Eastern District of Michigan and within the jurisdiction of this Honorable Court,

3 William Minski, alias William Seklecki, alias William Mininski, alias Joseph Michalski, late of the City of Detroit, State of Michigan, was a person who had been previously convicted of a crime of violence, to wit: a crime of robbery while armed, did unlawfully, wilfully, feloniously, and knowingly receive and possess five 45-caliber Remington Ball cartridges, which had been theretofore shipped and transported in interstate commerce: Contrary to the form, force, and effect

of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

COUNT THREE

And the Grand Jurors aforesaid, upon their like oaths, do further present: That heretofore, to wit: on the 22nd day of September A. D., 1941, at the City of Hamtramck, in the County of Wayne, in the Southern Division of the Eastern District of Michigan and within the jurisdiction of this Honorable Court, William Minski, alias William Seklecki, alias William Mininski, alias Joseph Michalski, late of the City of Detroit, State of Michigan, did unlawfully, wilfully, feloniously, and knowingly possess and receive a firearm, to wit: one 45-caliber Colt, Single action, Frontier Model, revolver, from which the manufacturer's serial number was obliterated and removed, and which had been theretofore shipped and transported in interstate commerce: Contrary to the form, force, and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

JOHN C. LEHR,
United States Attorney.
JOHN C. RAY,
Assistant United States Attorney,
Eastern District of Michigan.

4 In United States District Court

Motion to dismiss indictment

Filed December 5, 1941

And now comes the above named defendant, by his attorneys, and moves the Court to dismiss the Indictment, heretofore presented against him by the grand jury for the following reasons:

1. The Federal Firearms Statute (U. S. C. A. Title 15, Section 901, 902 (f) (i)), constitutes a denial of due process of law as provided for under the Fifth Amendment to the Constitution of the United States.

2. The said Federal Firearms Statute constitutes an ex post facto law, prohibited by Article I, Section 9 (3) of the Constitution of the United States; and further is contrary to the provisions of the Fifth Amendment to the Constitution prohibiting double jeopardy.

3. The Indictment is at variance with the provisions of the said Federal Firearms Act, in that it does not allege that the

said defendant received the Firearms or ammunition in interstate or foreign commerce.

HAROLD H. ARMSTRONG,
LAWRENCE J. VERDIER,
Attorneys for Defendant.

5 In United States District Court

Answer to motion to dismiss indictment

Filed December 10, 1941

Now comes the United States of America, plaintiff, by John C. Ray, Assistant United States Attorney for the Eastern District of Michigan, and answers defendant's motion to dismiss indictment as follows:

1. Answering the allegations of paragraph I of said motion, plaintiff denies same;

2. Answering the allegations of paragraph II of said motion, plaintiff denies same;

3. Answering the allegations of paragraph III of said motion, plaintiff denies same;

Wherefore, your plaintiff prays that the motion to dismiss indictment be denied.

UNITED STATES OF AMERICA,
JOHN C. LEHR,
United States Attorney.
By JOHN C. RAY,
Assistant United States Attorney.

6 In United States District Court

Present: Honorable FRANK A. PICARD, District Judge

Order denying motions to dismiss indictment and to suppress evidence

December 10, 1941

This cause having come on for hearing on this day on motions of the defendant, by his attorneys Harold H. Armstrong and Lawrence J. Verdier, to dismiss the indictment and to suppress evidence, and the court having been duly advised in the premises, it is now here ordered that said motions to dismiss the indictment and to suppress evidence be and the same are hereby denied.

FRANK A. PICARD,
District Judge.

7 In United States District Court

Defendant's requests to charge

Filed December 23, 1941

1. I charge you, that in order to bring in a verdict of guilty in this case, you must find, not only that the defendant was in possession of the firearm in question, but that such firearm was shipped or transported or received by him in interstate or foreign commerce. The fact that such firearm had previously been shipped or transported by some other person in interstate or foreign commerce would not be sufficient to bring in a verdict of guilty against this defendant.

2. I charge you that, in order to bring in a verdict of guilty against this defendant, you must find that the firearm in question was unlawfully shipped or transported in interstate or foreign commerce on or after July 30, 1938, the date on which the Federal Firearms Statute became effective. That shipment or transportation of said firearms in interstate or foreign commerce by the defendant or any other person or persons, prior to July 30, 1938, would not be unlawful, and must not be considered by you as evidence of defendant's guilt.

HAROLD H. ARMSTRONG,
LAWRENCE J. VERDIER.

8 In the District Court for the Eastern District of Michigan

[Title omitted.]

Bill of exceptions

Filed April 15, 1942

Be it remembered that the above-entitled criminal cause came on before this Court for trial of the issues and for the determination of the various questions presented to the Court by pleas and motions. Thereupon the following proceedings were had before the Honorable Frank A. Picard, District Judge, and a Jury, on December 10th, 16th, 19th, and 23rd, 1941.

Appearances: John C. Ray, Esq., Assistant U. S. Attorney for the United States of America. Harold H. Armstrong, Esq., and Lawrence J. Verdier, Esq., Attorneys for Defendant.

A jury was duly impaneled, accepted and sworn.

Motion to dismiss and order thereon

Thereupon the defendant, by his attorneys, brought on the motion to dismiss the indictment, which said motion is attached to, and forms a part of, the Record. After argument, the said motion was denied by the Court, which denial was excepted to by the defendant.

Mr. Ray then opened on behalf of the Government.

The Government presented the following witnesses, who
9 testified as follows:

CAREY FERGUSON

I am a Deputy Clerk of the Recorder's Court of Detroit and have with me the journal and court file pertaining to the case of The People of The State of Michigan v. William Minski, Docket No. 38875. The journal and court file show that the defendant William Minski was convicted by a jury, on November 10, 1921, of the crime of robbery while armed, and that a sentence of ten to twenty years imprisonment was imposed.

WILLIAM B. DRESDEN

I am now an Inspector of the Detroit Police Department. I was in Recorder's Court of Detroit at the time William Minski was convicted by a jury on November 10, 1921, of robbery while armed. I was the arresting officer in the case, and can and do identify the defendant in the instant case as the same William Minski who was convicted in Recorder's Court on November 10, 1921.

JOSEPH KOLONOWSKI

I am a police officer in the City of Hamtramck, and have been an officer for the past seventeen years.

On the morning of September 22, 1941, I was on cruiser duty with my partner, Detective Barney Nowicki. We were proceeding south on Jos. Campau in a police car, when we noticed William Minski and another man. They were standing on the east side of Jos. Campau, and began crossing over to the west side of the street. The unknown man was carrying a package under his left arm. After driving several blocks south we turned north and again passed William Minski and the other man. They were at this time getting into a Chevrolet automobile, and William Minski was behind the wheel. They then drove south on Jos.
Campau and we followed them. After driving a few
10 blocks south on Jos. Campau, William Minski turned right
on Casmere Avenue, thence west to Mackay Avenue, where he turned left to Berger Street. We passed the car and

ordered Minski to stop, which he did. We then got out of our car and proceeded to question Minski and the other man. I opened the door of the Chevrolet and on the floor board between William Minski and the other man, I found a paper package which contained a 45 caliber Colt, Frontier Model, single action revolver from which the manufacturer's serial numbers had been obliterated, Exhibit 3, and fully loaded with five Remington 45 caliber ball cartridges, Exhibits 4–A to 4–E inclusive. The other man gave his name as William Swindell and said that he owned the gun. We called the police patrol and Swindell and I drove to the police station in it. Nowicki drove Minski to the station in Minski's car. At the station we questioned them separately. Minski denied that he owned the gun. After we had questioned Swindell saveral hours, and had showed him Minski's former criminal record, Swindell changed his story and said that the gun did not belong to him. He further told us that while we were following their car down Jos. Campau Avenue, Minski told him to throw or kick the gun out of the car, for the reason that he, Minski, had a criminal record. We never threatened Swindell with prosecution and we did not give him any third degree.

When we first saw the two men that morning, Swindell was carrying a newspaper package; and when we finally found the gun on the floor of the car, it was in this same package, so far as I can tell.

I did not believe Swindell's first story that he was the owner of the gun. It did not sound right to me. The reason that it did not sound right to me was because of the inconsistencies in his story.

Barney Nowicki

We apprehended these two men in the manner and at
11 the time and place described by Kolonowski.

I did not believe Mr. Swindell's first story that he was the owner of the gun because he said he bought the gun from a man in Greenfield, Tennessee, but was unwilling to tell me the name of this man. In my opinion the gun might be forty years old.

William Swindell

I am 32 years old and I formerly lived at Greenfield, Tennessee. I came to Detroit about a year ago. On the morning of September 22, 1941, I met William Minski on the street in the City of Hamtramck. I was working at this time, but had not received my first pay. I had no money and I was trying to borrow some from a workman I knew. William Minski, whom I had known

before, said that he might be able to loan me some money later in the day, if I would come with him. We went for a drive in Minski's car, and then came back to Jos. Campau Avenue, Hamtramck. When I got into the car I noticed the package on the floor and knew it contained a revolver. I tried to place it in the glove compartment, but Minski said it would not fit in. We got out of the car and had a cup of coffee. Minski asked me to carry the package into the restaurant and said that he did not want to leave it in the car. As we were standing in the street we saw two detectives, one of whom Minski called by name. When the officers followed us Minski told me to kick the revolver out of the car, which I refused to do as the gun was not mine and I did nothing wrong.

When we were arrested, I told the officers that I owned the gun. I did so because Minski had offered to loan me some money and I wanted to help him out. Before the arrest he did not ask me to say that the gun was mine. We had nothing to eat at the police station. At the station we were kept in separate cells but Minski, through the connecting ventilating pipes, told me to claim ownership of the gun. In the afternoon Kolonowski told me about Minski's criminal record and then I told the officers the
12 truth that I did not own the gun and cartridges, but that they belonged to Minski.

ALBERT NOBLE

I am employed as an Investigator of the Alcohol Unit, Treasury Department, United States Government, and have been so employed for eight years.

I identify the revolver, Exhibit 3, and the cartridges, Exhibits 4–A to 4–E inclusive, as being turned over to me by Kolonowski and Nowicki, Hamtramck police officers. The revolver is a 45 caliber, Frontier Model single action revolver. The name and address of the maker is stamped on the revolver; and the place of manufacture is Hartford, Connecticut. It is not made in Michigan. The cartridges are manufactured by the Remington Cartridge Company of Bridgeport, Connecticut. They are not made in Michigan. Obviously both the gun and cartridges at one time were shipped or transported into Michigan from out of the State. The manufacturer's serial number on the gun has been obliterated, apparently by a file. I cannot express an opinion as to whether the gun is more than fifty years old. It might be.

The Government then rested.

The defendant then presented the following witnesses:

MRS. ANNABEL WARD

Swindell and his wife lived at my rooming house, 7518 John R. Street. Last August he and his wife parted because of his drinking.

Thereupon defendant rested.

Renewal of motion to dismiss and order thereon

Defendant then renewed his motion to dismiss the indictment, which said motion was again denied and an exception taken by the defendant.

Mr. Ray and Mr. Verdier then argued the case before the Jury.

13 *Requests to charge and ruling thereon*

The defendant then presented two requests to charge, which said requests are attached to and form a part of the Record. The Court denied these requests to charge and such denial was excepted to by the defendant.

Charge to jury

The Court then charged the Jury, in part, as follows:

This case is brought under the Federal Firearms Act, dated June 30, 1938. The evidence in this case shows that the defendant, William Minski, was convicted of a crime of violence, and there is no dispute on this point.

Section 902 (f) makes it unlawful for any person who has been convicted of a crime of violence to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce, and the possession of a firearm or ammunition by any such person shall be presumptive evidence that such firearm or ammunition was shipped or transported or received, as the case may be, by such person in violation of this chapter. Under this Section, all that the Government must prove is that the defendant was convicted of a crime of violence and that the firearm or ammunition was in his possession. Once the Government has done this, a presumption arises that the firearm or ammunition was unlawfully shipped in interstate commerce, and the burden passes to the defendant to show that the firearm or ammunition was not transported, shipped or received by him in interstate commerce.

Under Section 902 (i) it is unlawful for any person, whether or not convicted of a crime of violence, to transport, ship or knowingly receive in interstate or foreign commerce any firearm from which the manufacturer's serial number has been removed, obliterated, or altered, and the possession of any such firearm shall be presumptive evidence that such firearm was transported, shipped, or received, as the case may be, by the possessor in violation of the Act. In this case the Government has shown that the serial number has been removed or obliterated, and the
14 only other thing the Government must prove is that the defendant was in possession of such firearm. If the Government proves such possession, then the burden passes to the defendant to show that the firearm was not transported, shipped or knowingly received in interstate commerce by him.

(The balance of the Court's charge dealt with questions of facts, presumptions, etc. No objection is made to these omitted portions of the charge, and they are in no way relevant to the issues raised by this appeal.)

There was no general or specific exception to the Court's charge made following the instructions given by the Court but exception was made to the failure of the Court to give the specific charges as stated on Page 13.

Verdict and sentence

Thereupon the Jury retired and thereafter returned a verdict of guilty; and the defendant was sentenced by the Court to imprisonment for five years.

Judge's certificate to bill of exceptions

This is to certify that the foregoing Bill of Exceptions rendered by the defendant-appellant is correct in every particular; that with the exhibits, all of which are to be submitted to the Circuit Court of Appeals on the argumuent by appropriate stipulation and order, it contains all the evidence in this cause; and the said exhibits are hereby made a part of this Bill of Exceptions, and it is hereby settled, allowed and made a part of the record in this cause.

FRANK A. PICARD,
United States District Judge.

Dated Detroit, Michigan, April 13th, A. D. 1942.

15 In the District Court for the Eastern District of Michigan

[Title omitted.]

Stipulation as to bill of exception

Filed April 15, 1942

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the attached Bill of Exceptions is correct in each particular; that, with the Exhibits, all of which are to be submitted to the Circuit Court of Appeals on the argument by appropriate stipulation and order, it contains all the evidence in this cause and that it may be duly signed, settled and allowed by the Honorable Frank A. Picard, United States District Judge, who presided at the trial of this cause.

JOHN C. RAY,
Assistant United States Attorney.
LAWRENCE J. VERDIER,
Attorney for Defendant-Appellant.

16 In the District Court for the Eastern District of Michigan

[Title omitted.]

Assignments of error

Filed April 15, 1942

Now comes the defendant, by his attorneys, and says that in the proceeding herein and in the orders and judgments entered, there are manifest errors, to-wit:

Assignment of Error Number One

The Court erred in denying the motion made on behalf of the defendant to dismiss the indictment on the ground that the Federal Firearms Statute is unconstitutional because it denies due process of law.

Assignment of Error Number Two

The Court erred in denying the motion made on behalf of the defendant to dismiss the indictment on the ground that the Federal Firearms Statute is unconstitutional because it is an ex post facto law and also imposes double jeopardy.

Assignment of Error Number Three

The Court erred in denying the motion made on behalf of the defendant to dismiss the indictment on the ground that said indictment was at variance with the provisions of the Federal Firearms Act, in that the indictment did not allege that the defendant received the firearm or ammunition in interstate or foreign commerce, but alleged instead that he had received same
17 in interstate commerce.

Assignment of Error Number Four

The Court erred in denying defendant's request to charge number one.

Assignment of Error Number Five

The Court erred in denying defendant's request to charge number two.

And by reason of said errors and other manifest errors appearing in the Record herein, the defendant prays that the judgment of conviction be set aside and that he be discharged from custody.

HAROLD H. ARMSTRONG,
LAWRENCE J. VERDIER,
Attorneys for Defendant.

Dated Detroit, Michigan, April 2, 1942.

18 In the District Court of the United States
For the Eastern District of Michigan

[Title omitted.]

Notice of appeal

Filed Dec. 26, 1941

Name and Address of Appellant: William Minski, Wayne County Jail, Detroit, Michigan.

Name and Address of Appellant's Attorney: Harold H. Armstrong and Lawrence J. Verdier, 3380 Penobscot Building, Detroit, Michigan.

Offense: Violation of Federal Firearms Act, U. S. Code Annot. Sec. 902 (f) and (i).

Date of Judgment: December 23, 1941.

Brief Description of Judgment or Sentence: Imprisonment for five years.

Name of Prison where now confined, if not on bail: Wayne County Jail, Detroit, pending transfer to Federal Penitentiary.

I, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Sixth Circuit from the Judgment above mentioned on the grounds set forth below.

Pursuant to Rule 5, I hereby serve notice that I elect
19 to enter upon the service of the sentence pending appeal.

WILLIAM MINSKI.

Dated: Detroit, Michigan, December 26, 1941.

Grounds of appeal

1. Section 902 (f) and (i), United States Code Annotated, otherwise known as the Federal Firearms Act is unconstitutional, under the Fifth Amendment to the Constitution and also under Article I, Section 9 of the Constitution. The Trial Court erred in denying Defendant's Motion to Dismiss the Indictment on the foregoing grounds.

2. The Trial Court erred in refusing to give Defendant's Request to Charge No. 1.

3. The Trial Court erred in refusing to give Defendant's Request to Charge No. 2.

20 In United States District Court

Order extending period for filing bill of exceptions

Filed January 20, 1942

At a session of said Court held in the Federal Building in the City of Detroit, Wayne County, Michigan, this 20th day of January, 1942.

Present: Honorable FRANK A. PICARD, District Judge.

On motion of Harold H. Armstrong and Lawrence J. Verdier, attorneys for defendant, William Minski.

It is hereby ordered that the period of thirty days allowed for filing a Bill of Exceptions in the above matter be and hereby is extended for an additional period of sixty days.

FRANK A. PICARD,
District Judge.

In United States District Court

Order extending period for filing bill of exceptions

Filed March 23, 1942

At a session of said Court held in the Federal Building in the City of Detroit, Wayne County, Michigan, this 23rd day of March, 1942.

Present: Honorable FRANK A. PICARD, District Judge.

On motion of Harold H. Armstrong and Lawrence J. Verdier, attorneys for defendant, William Minski.

It is hereby ordered that the period of thirty days allowed for filing a Bill of Exceptions in the above matter be and hereby is extended for an additional period of sixty days.

FRANK A. PICARD,
District Judge.

Approved:
JOHN C. RAY,
Assistant United States Attorney.

21 In the District Court of the United States For the Eastern District of Michigan

[Title omitted.]

Stipulation re record

Filed April 15, 1942

It is hereby stipulated and agreed by and between the attorneys for the respective parties to said cause that the Record on Appeal herein may be certified by the Clerk of the District Court for the Eastern District of Michigan, Southern Division, to the Court of Appeals for the Sixth Circuit, without comparing the attached typewritten record with the originals on file in this court and in their offices.

JOHN C. RAY,
Assistant U. S. Attorney,
Attorneys for United States of America.
HAROLD H. ARMSTRONG,
Attorney for Defendant.

Dated April 15, 1942.

22 In the District Court of the United States for the Eastern District of Michigan

[Title omitted.]

Stipulation as to contents of record on appeal

Filed April 16, 1942

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that in lieu of serving and filing herein a designation of the portions of the record, proceedings and evidence to be contained in the record on appeal, the said record on appeal shall contain the following:

1. Docket entries.
2. Indictment.
3. Motion to Dismiss Indictment, and Answer thereto; and Order Denying Motions to Dismiss Indictment and to Suppress Evidence.
4. Defendant's Requests to Charge.
5. Bill of Exceptions as heretofore settled and allowed by the Trial Court; Stipulation re correctness of Bill of Exceptions.
6. Assignments of Error.
7. Notice of Appeal.
8. Orders Extending Period for Filing Bill of Exceptions.
9. Stipulation Re Record on Appeal.
10. Stipulation as to contents of Record on Appeal.

JOHN C. RAY,
Assistant United States Attorney.
HAROLD H. ARMSTRONG,
Attorney for Defendant.

23 [Clerk's certificate to foregoing transcript omitted in printing]

24 In United States Circuit Court of Appeals for the Sixth Circuit

Minute entry of argument and submission

October 19, 1942

Before: HICKS, ALLEN, and HAMILTON, JJ.

This cause is argued by Harold H. Armstrong for Appellant and by John Ray for Appellee and is submitted to the court.

In United States Circuit Court of Appeals

Judgment

Entered December 2, 1942

Appeal from the District Court of the United States for the Eastern District of Michigan.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed and the case remanded for proceedings not inconsistent with the opinion of this court.

25 [File endorsement omitted.]

In United States Circuit Court of Appeals, Sixth Circuit

Nos. 9157 and 9179

No. 9157

WILLIAM MINSKI, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

No. 9179

FRANK DELIA, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeals from the District Court of the United States for the Eastern District of Michigan, Southern Division

Opinion

Filed December 2, 1942

Before HICKS, ALLEN, and HAMILTON, Circuit Judges.

HICKS, Circuit Judge. These cognate cases are disposed of by one opinion.

Appellant Minski was convicted upon the first and second counts of an indictment which alleged violations of subsection (f) of Sec. 2 of the Federal Firearms Act [52 Stat., ch. 850, p. 1250 et seq., 15 U. S. C., subsections 902 (f) and (i)] and upon a third count which alleged a violation of subsection (i) of Sec. 2 of the same Act.

Appellant Delia was convicted upon both counts of an indictment which alleged violations of subsection (f) of the statute. Subsection (f) is as follows:

"(f) It shall be unlawful for any person who has been convicted of a crime of violence or is a fugitive from justice to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce, *and the possession of a firearm or ammunition by any such person shall be presumptive evidence that such firearm or ammunition was shipped or transported or received, as the case may be, by such person in violation of this Act.*" [Italics ours.]

Subsection (i) is as follows:

"(i) It shall be unlawful for any person to transport, ship, or knowingly receive in interstate or foreign commerce any firearm from which the manufacturer's serial number has been removed, obliterated, or altered, *and the possession of any such firearm shall be presumptive evidence that such firearm was transported, shipped, or received as the case may be, by the possessor in violation of this Act.*" [Italics ours.]

The facts are, that Minski was on November 10, 1921, convicted in the Recorder's Court of Detroit of robbery while armed, and a sentence of 10 to 20 years was imposed. There was substantial evidence that on September 22, 1941, Minski, while driving along the streets of Hamtramck, Mich., was stopped by police officers, who found on the floor of his car a 45 caliber Colt, frontier model, single action, revolver, from which the manufacturer's serial number had been obliterated. The revolver was loaded with five Remington 45 caliber ball cartridges. There was stamped thereon the name and address of the maker and the place of manufacture, to wit, Hartford, Conn. The cartridges were manufactured by Remington Cartridge Company of Bridgeport, Conn. There was evidence that the revolver was 40 or 50 years old.

In Delia's case the facts are, that on October 4, 1930, he was convicted in the Recorder's Court of Detroit of robbery while armed and was given an indeterminate sentence of from 12½ to 25 years. There was substantial evidence that on September 25, 1941, he was found in Detroit in possession of a Victor 38 caliber,

double action, No. 19435 revolver, containing two 38 caliber Peters cartridges and three R. W. S. 38 caliber cartridges. This revolver was made about 1920 by Harrington Richardson in Worcester, Mass. Some of the cartridges were made in Ohio and the others in Germany.

The caption of this Act is: "To regulate commerce in firearms."

Subsection (f) applies to two classes of persons, to wit:
27 (1) those who have been convicted of a crime of violence; and (2) those who are fugitives from justice but not to either unless they have received a firearm or ammunition which has been shipped or transported in interstate or foreign commerce. Section (i) applies to all who transport, ship or knowingly receive in interstate or foreign commerce any firearm from which the manufacturer's serial number has been obliterated or altered.

Ordinarily it would not be difficult for the Government to prove that a defendant found with forbidden firearms or ammunition was a convict of the class mentioned, or a fugitive from justice, but to establish that the forbidden articles had been shipped, transported or received in interstate commerce, would raise for it an almost insuperable burden unless the law should bring to its aid some character of presumptive evidence. This is true because the circumstances under which the defendant has acquired possession of the forbidden articles are in most cases peculiarly within his knowledge. For this reason the Congress undertook to bring to the aid of the Government, in its task of enforcing the statute, the "presumptive evidence" clauses which we have italicized.

The principal question here is, whether the presumptions provided by subsections (f) and (i) were violative of the due process clause of the Fifth Amendment.

Statutory presumptions, whereby the proof of one fact or group of facts, shall constitute prima facie or presumptive evidence of the main or ultimate fact are not, per se, illegal. Such statutes have been upheld even in criminal cases. Yee Hem v. United States, 268 U. S. 178; Copperthwaite et al. v. United States, 37 Fed. (2d) 846, 848 (C. C. A. 6).

In Mobile, J. & K. C. R. R. Co. v. Turnipseed, Admr., 219 U. S. 35, 42, the court upheld legislation which provided, as a rule of evidence, that the proof of one fact shall constitute prima facie evidence of the main fact in issue, but it pointed out a well-recognized qualification to the rule that it is "essential that there shall be some rational connection between the fact proved and the ultimate fact presumed and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate."

In McFarland v. American Sugar Co., 241 U. S. 79, the court reviewed a statute of Louisiana, which created the rebuttable presumption that any person systematically paying in that state a lower price for sugar than he paid in any other state is
28 a party to a monopoly or conspiracy in restraint of trade.

Quoting, as we have done from the Turnipseed case, the court said further:

"As to the presumptions, of course the legislature may go a good way in raising one or in changing the burden of proof, but there are limits. * * * The presumption created here has no relation in experience to general facts. It has no fundation except with tacit reference to the plaintiff. *But is it not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime.*" [Italics ours.]

In Manley v. Georgia, 279 U. S. 1, the court had before it a Georgia banking Act which declared that "every insolvency of a bank shall be deemed fraudulent and the president and directors shall be severally punished by imprisonment and labor in the penitentiary * * * provided that the defendant * * * may repel the presumption of fraud by showing that the affairs of the bank have been fairly and legally administered, * * *"

The court said:

"State legislation declaring that proof of one fact or a group of facts shall constitute prima facie evidence of the main or ultimate fact in issue is valid *if there is a rational connection between what is proved and what is to be inferred.* * * * A statute creating a presumption that is arbitrary or that operates to deny a fair opportunity to repel it, violates the due process clause of the Fourteenth Amendment. Bailey v. Ala., 219 U. S. 219, 233, et seq. Mere legislative fiat may not take the place of fact in the determination of issues involving life, liberty or property." [Italics ours.]

In Western & Atl. R. R. Co. v. Henderson, 279 U. S. 639, a Georgia statute provided that upon the mere fact of a collision between a railway train and a vehicle at a highway grade crossing and resulting death, a presumption arose that the company and its employees were negligent in the particulars alleged in the complaint, etc. The court held that the presumption was unreasonable and arbitrary and violated the due process clause of the Fourteenth Amendment. It said:

"A statute creating a presumption that is arbitrary or that operates to deny a fair opportunity to repel it violates the
29 due process clause of the Fourteenth Amendment. Legislative fiat may not take the place of fact in the judicial determination of issues involving life, liberty or property."

In Morrison v. California, 291 U. S. 82, it is said, at page 90:

"What is proven must be so related to what is inferred in a case of true presumption as to be at least a warning signal according to the teachings of experience."

So also, in Adams v. New York, 192 U. S. 585, 593, it is said:

"The legislature may enact that when certain facts have been proved they shall be prima facie evidence of the existence of the main fact in question, *provided the inference of the existence of the main fact, because of the existence of the fact actually proved, must not be merely and purely arbitrary or wholly unreasonable, unnatural or extraordinary.*" [Italics ours.]

To substantially the same effect see Bailey v. Alabama, 219 U. S. 219, 238.

In Insurance Co. v. Weide, 78 U. S. 438, 441, the court said:

"A presumption is an inference as to the existence of a fact not actually known, arising from its usual connection with another which is known. * * *"

In the Yee Hem case, supra, and the Copperthwaite case, supra, the requisite element of reasonableness in statutory presumptions was adverted to. See also Luria v. United States, 231 U. S. 9, 25. There must be some logical connection or relationship based upon common knowledge, reason and experience between the proven fact or facts and the inferred or presumptive fact. If such connection does not exist, it follows, obviously, that a defendant is exposed to conviction upon evidence which has no probative value; or, put in another way, upon no evidence at all. It follows, further, that if at the close of the Government's proof the accused seeks to defend himself, the burden is cast upon him of explaining a situation which up to that point had no incriminating tendency or effect.

30 With reference to subsection (f), we find no basis for the proposition that if an ex-convict is found with a firearm or ammunition an inference or presumption follows that he received, shipped or transported those articles in interstate commerce. Such presumption does not exist in fact and cannot be brought into existence by legislative fiat.

Presumptions are founded on the ordinary course of things; and common knowledge or experience does not teach that the class of persons with which we are here dealing usually procures firearms through the channels of interstate commerce. It is as likely that the firearms and ammunition found upon appellants were

acquired within the State of Michigan in an intrastate transaction. We are here forced to deal in guess work and one guess is as good as another. Suppose appellants had been apprehended in one of the New England states, where such weapons appear to be manufactured, would the presumption logically arise that they had acquired them or brought them from without the state?

Then again, the Minski revolver was 40 or 50 years old, and the Delia revolver about 20 years old. Is there any reasonable presumption that these weapons were acquired by appellants in violation of this Act after June 30, 1938, the date of its passage?

Equally, under subsection (i), we think it is a non sequitur that the possessor of a firearm from which the manufacturer's serial number has been obliterated must presumptively have transported, shipped or received it in interstate commerce. The very age of the weapons here involved demonstrates the unfairness of drawing any inferences from the obliterated markings as to the manner of their acquisition or possession.

The guaranty of the due process clause of the Fifth Amendment is, that a law shall not be unreasonable, arbitrary or capricious, and we think that the presumptive evidence clauses of the Act here involved must fall before the Constitutional inhibition. We are aware that some district courts have found otherwise but we are not in accord with such holdings.

The judgment appealed from are reversed and the cases remanded to the District Court for proceedings not inconsistent herewith.

31 [Clerk's certificate to foregoing transcript omitted in printing.]

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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 637

UNITED STATES OF AMERICA, PETITIONER

v.

WILLIAM MINSKI

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Sixth Circuit, entered on December 2, 1942, setting aside convictions under Sections 2 (f) and 2 (i) of the Federal Firearms Act of 1938.

OPINION BELOW

The opinion of the circuit court of appeals (R. 16–21) is not yet reported.

JURISDICTION

The judgment of the circuit court of appeals was entered on December 2, 1942 (R. 16). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also, Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court on May 7, 1934.

QUESTIONS PRESENTED

1. Whether Section 2 (f) of the Federal Firearms Act, which provides that the possession of a firearm or ammunition by "any person who has been convicted of a crime of violence or is a fug*u*tive[1] from justice * * * shall be presumptive evidence that such firearm or ammunition was shipped or transported or received" in interstate or foreign commerce in violation of the Act, is unconstitutional under the Fifth Amendment.

2. Whether Section 2 (i) of the Federal Firearms Act, which provides that the possession, by anyone, of "any firearm from which the manufacturer's serial number has been removed, obliterated, or altered * * * shall be presumptive evidence that such firearm was transported, shipped, or received" in interstate or foreign commerce in violation of the Act, is unconstitutional under the Fifth Amendment.

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[1] So in original; probably should read "fugitive".

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The Fifth Amendment in pertinent part provides as follows:

> No person shall be * * * deprived of life, liberty, or property, without due process of law * * *.

Sections 2 (f) and 2 (i) of the Federal Firearms Act of 1938, 52 Stat. 1250, 1251 (15 U. S. C. Sections 902 (f) and 902 (i) read as follows:

Section 2 (f):

> It shall be unlawful for any person who has been convicted of a crime of violence or is a fug*u*tive [2] from justice to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce, and the possession of a firearm or ammunition by any such person shall be presumptive evidence that such firearm or ammunition was shipped or transported or received, as the case may be, by such person in violation of this Act.

Section 2 (i):

> It shall be unlawful for any person to transport, ship, or knowingly receive in interstate or foreign commerce any firearm from which the manufacturer's serial number has been removed, obliterated, or altered, and the possession of any such firearm shall be presumptive evidence that

[2] So in original; probably should read "fugitive".

such firearm was transported, shipped, or received, as the case may be, by the possessor in violation of this Act.

STATEMENT

On December 23, 1941, William Minski was convicted in the United States District Court for the Eastern District of Michigan upon a three-count indictment charging violations of Sections 2 (f) and 2 (i) of the Federal Firearms Act, and sentenced to imprisonment for 5 years on each count, the sentences to run concurrently (R. 1, 2–3). The first count (R. 2) alleged that on September 22, 1941, Minski "was a person who had been previously convicted * * * of robbery while armed"[3] and that he did receive and possess a "45-caliber Colt, single action, Frontier Model, revolver, which * * * had theretofore been shipped and transported in interstate commerce." The second count (R. 2–3) repeated the allegations of previous conviction and alleged further that Minski, on September 22, 1941, did receive and possess "five 45-caliber Remington Ball cartridges, which had been theretofore shipped and transported in interstate commerce." The third count (R. 3) alleged that Minski on September 22, 1941 did receive and possess a "45-caliber Colt, Single action, Frontier

[3] Armed robbery is a "crime of violence" for the purposes of the Act. See Section 1 (6), 52 Stat. 1250, 15 U. S. C. Section 901 (6).

Model, revolver, from which the manufacturer's serial number was obliterated and removed, and which had been theretofore shipped and transported in interstate commerce."

The evidence in support of the conviction may be summarized as follows:

On September 22, 1941, two police officers of the City of Hamtramck, Michigan, arrested Minski and one Swindell while they were riding in an automobile operated by Minski (R. 6–8). At the time of the arrest the officers found on the floor board of the automobile a Colt .45-caliber single-action revolver loaded with Remington .45-caliber ball cartridges which belonged to Minski (R. 6–8). Both the revolver and the cartridges were manufactured in Connecticut (R. 8). The serial number on the revolver, which was about forty years old (R. 7, 8), had been obliterated (R. 7, 8). The Government did not introduce evidence to show when or where Minski first obtained the weapon. Minski did not take the stand, nor did he offer any evidence other than testimony directed to the impeachment of Swindell (R. 9), who had testified for the Government (R. 7, 8). Prior to the arrest Minski had been convicted of armed robbery in the Recorder's Court of Detroit, Michigan (R. 6).

The circuit court of appeals reversed the convictions on all three counts on the ground that the presumptions provided in Sections 2 (f) and

2 (i) of the Act were unreasonable, arbitrary, and capricious, and therefore violative of the due process clause of the Fifth Amendment, in that there was no "rational connection" between the facts which must be proved to make the presumptions operative and the ultimate facts inferable by virtue of the presumptions.

SPECIFICATION OF ERRORS TO BE URGED

The circuit court of appeals erred:

1. In holding that the presumption provided in Section 2 (f) of the Federal Firearms Act is unconstitutional.

2. In holding that the presumption provided in Section 2 (i) of the Federal Firearms Act is unconstitutional.

REASONS FOR GRANTING THE WRIT

1. The decision of the circuit court of appeals that the presumption in Section 2 (f) of the Federal Firearms Act violates the due process clause of the Fifth Amendment is in direct conflict with the decision of the Circuit Court of Appeals for the Third Circuit in *Frank Tot* v. *United States,* decided October 28, 1942, and now pending on petition for a writ of certiorari, No. 569, October Term, 1942, and with the decision of the Circuit Court of Appeals for the First Circuit in *Jose Velazquez* v. *United States,* decided November 27, 1942. In our memorandum in the *Tot* case we have not opposed the granting of the petition

insofar as it raises the constitutionality of the presumption provided in Section 2 (f). The same question is also presented in our petition for a writ of certiorari filed this day to review the judgment of the circuit court of appeals in *Frank Delia* v. *United States.* The instant case and the *Delia* case, though tried separately, were decided by the court below in one opinion.

2. The question of the constitutionality of the presumption clause of Section 2 (i) is raised for the first time in the instant case. It is a question which not only is novel, but which also is of great importance to the Government, since the enforcement of the substantive provision of Section 2 (i) would be practically impossible without the aid of the presumption clause. Manifestly, the practical effect of the obliteration of the serial number on a firearm is to preclude anyone other than the possessor from obtaining, or even searching for, evidence showing whether the firearm was transported, shipped, or received by him in interstate commerce. Further, since the test of "opportunities for knowledge" applied by the Circuit Court of Appeals for the Third Circuit to sustain the presumption clause of Section 2 (f) in the *Tot* case, *supra,* appears equally applicable to that of Section 2 (i), the decision of the Sixth Circuit conflicts in principle with the decision in the *Tot* case.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

CHARLES FAHY,
Solicitor General.

JANUARY 7, 1943.

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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 637

UNITED STATES OF AMERICA, PETITIONER

v.

WILLIAM MINSKI

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

On page 6 of the petition for certiorari in this case, the statement is made that the decision herein of the Circuit Court of Appeals for the Sixth Circuit is in direct conflict with the decision of the Circuit Court of Appeals for the Third Circuit in *Frank Tot* v. *United States,* certiorari granted, No. 569, this Term, and with the decision of the Circuit Court of Appeals for the First Circuit in *Jose Velazquez* v. *United States,* now pending on petition for certiorari,

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No. 713, this Term. As to the latter decision that statement is in error. It was made before the record in the *Velazquez* case was served on us and was based on the opinion of the First Circuit Court of Appeals, from which a conflict appears (R. 49, No. 713).

The *Velazquez* decision is, however, supportable independently of the grounds on which the Government relies herein. These independent grounds are discussed at pages 6–8 in the brief in opposition filed by the United States in *Velazquez* v. *United States,* No. 713.

A conflict remains, however, between the decision below in the instant case and that of the Third Circuit Court of Appeals in *Frank Tot* v. *United States,* certiorari granted, No. 569, this Term.

Respectfully submitted,

CHARLES FAHY,
Solicitor General.

MARCH 1943.

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